

29

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 13, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:050D-186

Oahu

Amendment of Prior Land Board Action of August 26, 2005,
Agenda Item D-16, Perpetual Non-Exclusive Easement to the
United States of America, for Road Right-of-Way Purposes,
Pupukea-Paumalu, Koolauloa, Oahu, Tax Map key: 5-9-06:026.

BACKGROUND:

The Land Board at its meeting of August 26, 2005, under agenda item D-16 (copy attached), approved the issuance of a perpetual non-exclusive easement to the United States of America for a portion of a military training road in the Pupukea-Paumalu region of the Koolau Mountain Range shown outlined on Exhibit "A". This road is commonly referred to as Drum Road.

This region of the United States Army military training area is owned by the State of Hawaii and is in the Pupukea-Paumalu Forest Reserve. It is leased to the U.S. Army by the Department of Land and Natural Resources under General Lease No. S-3850. The existing Drum Road is located within this region and also within the subject lease.

The prior Land Board action authorized a perpetual non-exclusive easement for road right-of-way purposes for this section of Drum Road so that Federal funds could be released for needed repairs. The United States Army Corps of Engineers recently requested it be issued an immediate construction right-of-entry so the repairs can be started immediately. It also requested that the construction right-of-entry remain in force until the perpetual non-exclusive easement document for road right-of-way purposes is executed.

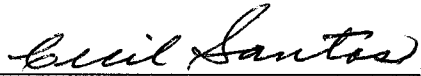
RECOMMENDATION: That the Board:

1. Amend its Land Board action of August 26, 2005, agenda item D-16 to add authorization for the issuance of a construction right-of-entry for repairs to Drum Road,

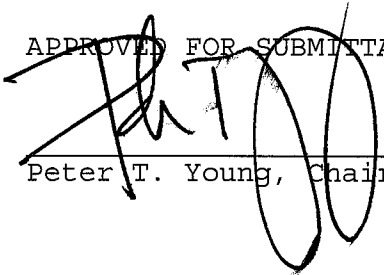
shown outlined on Exhibit "A", to commence immediately and to expire when the perpetual non-exclusive easement document for road right-of-way purposes is executed, subject to the following terms and conditions:

- A. The standard terms and conditions of the most current construction right-of-entry form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Cecil Santos
Oahu District Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

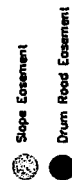
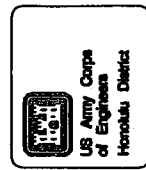


EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 26, 2005

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:050D-186

Oahu

Grant of Perpetual, Non-Exclusive Easement to United States
of America, for Road Right-of-Way Purposes, Pupukea-Paumalu,
Koolauloa, Oahu, Tax Map Key: 5-9-06:026.

APPLICANT:

United States of America, whose business and mailing address is
U. S. Army Engineer District, Honolulu, Building 230, Fort
Shafter, Hawaii 96858-5440.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Pupukea-Paumalu situated at
Pupukea-Paumalu, Koolauloa, Oahu, identified by Tax Map Key:
5-9-06:026, as shown on the attached maps labeled Exhibits A and
B.

AREA:

8.110 acres, more or less.

ZONING:

State Land Use District: Conservation
County of Honolulu CZO: P-1 Preservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 26, 2005

ITEM D-16

CURRENT USE STATUS:

Encumbered by General Lease No. S- 3850, to the United States of America, Lessee, for military purposes. Lease to expire on August 16, 2029.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a road right-of-way over and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Environmental Assessment for improvements to Drum Road, Helemano Military Reservation to Kahuku Training Area, Oahu was filed with the Office of Environmental Quality Control as a federal document on July 8, 2005.

DCA VERIFICATION:

Not applicable. The Applicant is a government agency.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standard and at Applicant's own cost.
2. Process and obtain subdivision approval at Applicant's own cost.

REMARKS:

The United States Army is planning to upgrade Drum Road in the Koolau Mountains on Oahu that is used for military exercises. It was first built in 1935 and extends from the Helemano Military Reservation to and through the Kahuku Training Area shown on Exhibit C.

Over the decades the road has shifted due to rock slides, land slides, flooding, and forest growth. The Army is now planning to

repair and upgrade portions of Drum Road in its current location. It owns a portion of it and leases most of it under easements obtained from Dole Foods, Kamehameha Schools and the City and County of Honolulu.

This submittal is concerned with granting a perpetual easement for that section of the road that traverses the mountainous State-owned public lands in the Pupukea-Puamalu. This area is located above the Pupukea - Paumalu Homestead lots shown on Exhibits A and B.

The Army currently has the subject area leased to them for training purposes under General Lease No. S-3850 and is currently using the road there under this lease from DLNR. The lease expires on August 16, 2029 and the Army maintains that they do not have a sufficient real estate right to execute this project unless they acquire a perpetual road easement. Federal law requires perpetual easement rights for this type of construction projects.

The United States is currently in compliance in the lease to them and there are no outstanding issues.

An Environmental Assessment for improvements to Drum road was filed with the Office of Environmental Quality control as a federal document on July 8, 2005. The applicant maintains that due to federal laws, the United States is not required to process a Conservation District Use Application, (CDUA), with DLNR.

We requested comments from various agencies. The Department of Hawaiian Home Lands had no comments. The Department of Public Works of the City and County responded with no objections. A comment request was sent to the Clean Water Branch of the State Department of Health. They informed us that the Department of Army applied for a National Pollutant Discharge Elimination System general permit coverage for discharges of construction dewatering effluent and storm water associated with construction activity for the entire project.

The Office of Conservation and Coastal Lands of DLNR informed us that it was their understanding that the applicant has decided not to process a CDUA. But, it is their belief that a CDUA should be completed for the project.

The Administrator of the Office of Hawaiian Affairs responded with his concern over the issuance of a perpetual easement on ceded lands. The Pupukea Paumalu area are ceded lands. He informs us that no perpetual easement should be granted on ceded lands. The State has a fiduciary duty to its beneficiaries who are the residents of Hawaii and the Native Hawaiians in specific. He informs us that no matter the size of the land request, the use, or the requestor, ceded lands cannot and should not be given away in fee simple or through perpetual easements.

RECOMMENDATION: That the Board:

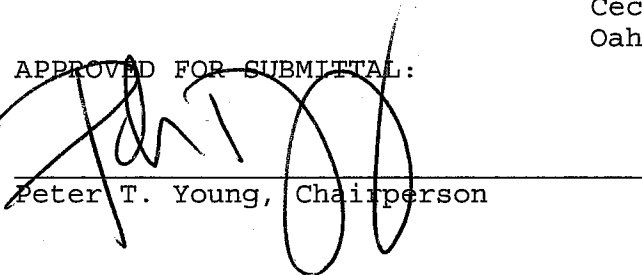
1. Subject to the applicant fulfilling all of the applicant's requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the United States of America covering the subject area for road right of-way purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

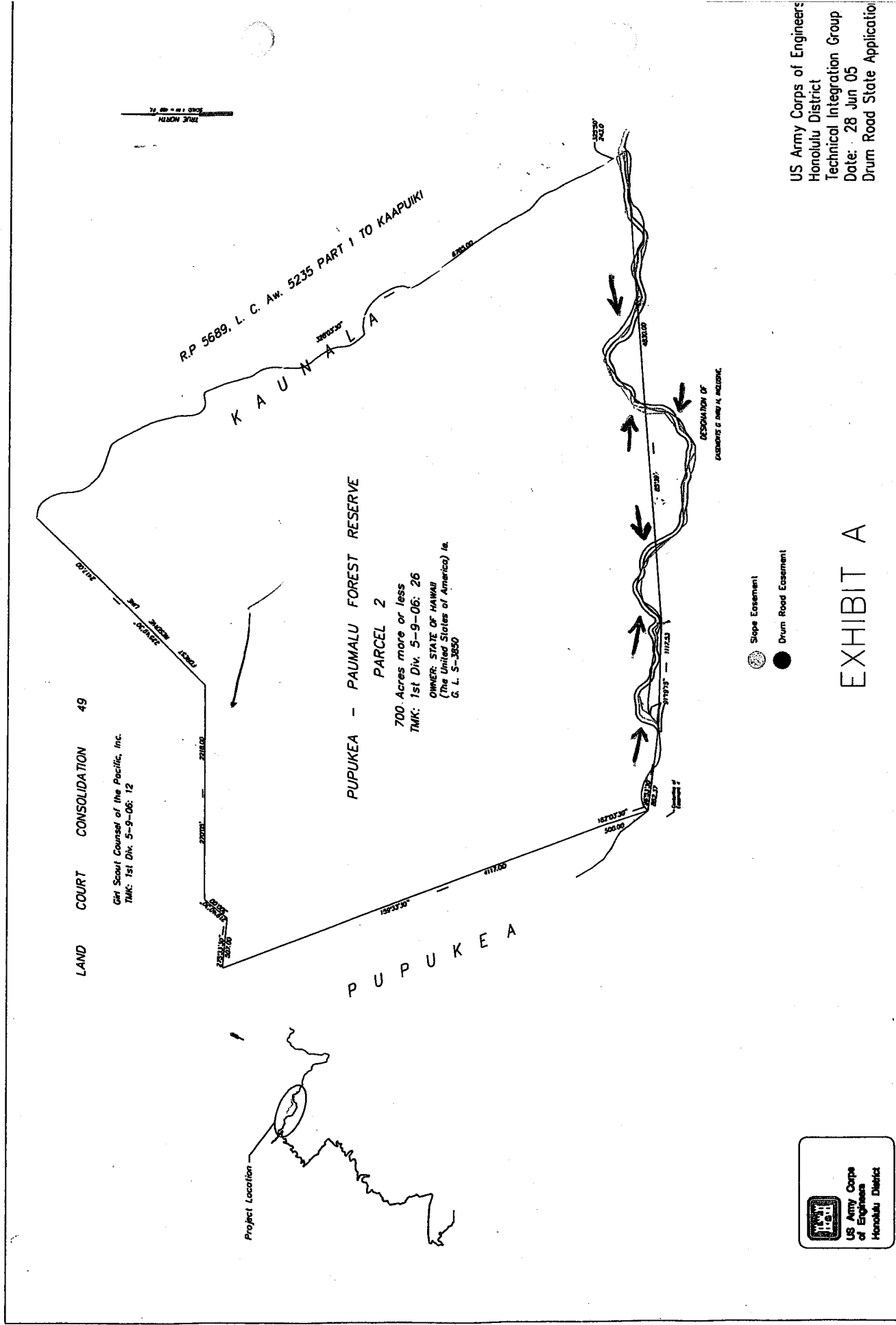


Cecil Santos
Oahu District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



US Army Corps of Engineers
Honolulu District
Technical Integration Group
Date: 28 Jun 05
Drum Road State Application



EXHIBIT A



Pupukea-Paumalu
Section

DRUM ROAD

Kahuku Ting Area

Kawailoa
Ting Area

McCormick Gate

Site 6430/SC10

Ashley Gate

Site 6430/SC11

Upaia Gate

Site 6430/SC6

Site 6430/SC2

Helamano Gate

Helamano
Military Res

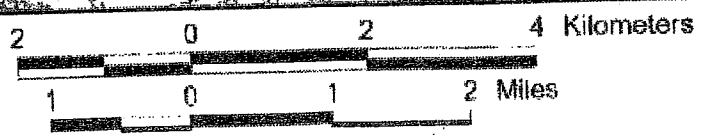


EXHIBIT "C"